

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF RHODE ISLAND

3  
4 THE ESTATE OF YARON UNGAR, ET AL

CA No. 00-105 L

5 plaintiff

6  
7 v

PROVIDENCE, RI  
DECEMBER 12, 2002

8 THE PALESTINIAN AUTHORITY, ET AL

9 defendant

10  
11 BEFORE MAGISTRATE JUDGE DAVID L. MARTIN

12  
13 APPEARANCES:

14 FOR THE PLAINTIFF:

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1 DECEMBER 12, 2002 - MORNING SESSION

2 THE COURT: Good morning. This is the matter of  
3 The Estate of Yaron Ungar, et al versus the Palestinian  
4 Authority, et al, Civil Action 00-105 L. This matter is  
5 scheduled for a hearing this morning on motions filed by the  
6 plaintiffs. The motions are, the plaintiffs' motion to  
7 compel discovery, the plaintiffs' motion to strike, the  
8 plaintiffs' motion to strike, the plaintiffs' motion for  
9 sanctions, the plaintiffs' petition for issuance of letter of  
10 request for judicial assistance. The Court intends to  
11 address these motions in the following order. I'm first  
12 going to be addressing the motions to strike, the motion for  
13 sanction, the motion to sever, and then we'll proceed to the  
14 motion to compel discovery. And then, lastly, the motion for  
15 plaintiffs' petition for issuance of letter of request for  
16 judicial assistance.

17 I'm going to ask the attorneys present in the  
18 courtroom to identify themselves, and then I'll ask counsel  
19 on the telephone to identify himself. Counsel in the  
20 courtroom, please.

21 MR. STRACHMAN: David Strachman for the plaintiffs.

22 MR. SHERMAN: Deming Sherman for the Palestinian  
23 defendants.

24 MR. SCHILLING: Lawrence Schilling on the  
25 telephone, your Honor. I'm on a speakerphone, and I can -- I

1 hope you can hear me.

2 THE COURT: Yes, I can hear you. Can you hear me,  
3 Mr. Schilling?

4 MR. SCHILLING: I can hear you very clearly. The  
5 counsels' part are sort of faint but I think I can make it  
6 out.

7 THE COURT: I think I will direct counsel when they  
8 speak to go to the podium and speak directly into the  
9 microphone, and I will check again with you, Mr. Schilling,  
10 to make sure you can hear counsel clearly.

11 MR. SCHILLING: Your Honor, we had a motion for a  
12 protective order. Your Honor granted the motion to the  
13 extent of granting a stay of discovery, but our motion has  
14 also sought leave to assert objections or whatever other  
15 responses we had to the discovery requests. Is that motion  
16 before you, as well?

17 THE COURT: It's not scheduled for hearing,  
18 Mr. Schilling. I will, when we reach the motion -- what  
19 you're referring to would go to the motion to compel  
20 discovery, is that correct?

21 MR. SCHILLING: It would certainly tuck, you know,  
22 tie into it, yes, your Honor.

23 THE COURT: I will, when we get to that motion, the  
24 motion to compel discovery, I'll address with you your motion  
25 for a protective order and the status of that. I recall from

1 our recent telephone conversation where Mr. Clark referred to  
2 my granting of the protective order. My recollection was  
3 that I indicated that now that Judge Lagueux has made a  
4 ruling, I did not think that my protective order continued  
5 indefinitely. But, we'll get to that at the appropriate  
6 time. I appreciate your calling to my attention.

7 The Court first wants to address with plaintiffs'  
8 counsel the three motions, plaintiffs' motion to strike,  
9 plaintiffs' motion for sanctions, plaintiffs' motion to  
10 sever. In reviewing those motions, I see that the motion to  
11 sever was cast as an alternative request if the motion to  
12 strike and the motion for sanctions were not granted. In  
13 light of the fact that on July 12, 2002 the Court overruled  
14 the objection filed by the Palestinian Authority and the PLO  
15 to the hearing on plaintiffs' motion to enter default  
16 judgment against Hamas and the Hamas Operatives, is there  
17 still a need to rule upon these motions, Mr. Strachman?

18 MR. STRACHMAN: The motions, specifically, Judge,  
19 the motion to strike and the motion --

20 THE COURT: I'm going to stop you. Mr. Schilling,  
21 can you hear Mr. Strachman clearly?

22 MR. SCHILLING: Yes, very very clearly, your Honor.

23 THE COURT: He's now at the podium and I think  
24 you'll be able to hear everyone who speaks from the podium  
25 clearly. Please resume, Mr. Strachman.

1 MR. STRACHMAN: Thank you, your Honor. As I  
2 indicated during our brief conversation, conference, rather,  
3 on December 2, I believe that the motions to strike and the  
4 motion for sanctions are really, in a sense, academic at this  
5 point as the Court clearly issued an order emanating from a  
6 brief hearing that we had on July 12th, I believe, just prior  
7 to the evidentiary hearing at which point your Honor issued  
8 an order disallowing the request of the defendants to stop  
9 the proceedings. And the thrust of my motions to strike and  
10 for sanctions went particularly to that, to that issue. But  
11 the issue in terms of the motion to sever, we believe is  
12 necessary and would ask that the Court rule on it. We filed  
13 a supplemental memo in August addressing some of the concerns  
14 that were raised by the PLO and the PA specifically to the  
15 issue of severance, and we believe that that's something we  
16 would request your Honor to rule on.

17 THE COURT: The supplemental memorandum you're  
18 referring to, is that plaintiffs' reply to memorandum of the  
19 Palestinian Authority and the Palestine Liberation  
20 Organization objecting to plaintiffs' motion to sever?

21 MR. STRACHMAN: Correct.

22 THE COURT: So, you're still pressing the motion to  
23 sever?

24 MR. STRACHMAN: Yes. I think, I think it's still  
25 necessary.

1 THE COURT: I'll hear you briefly on the motion to  
2 sever, particularly in terms of why you feel it's still  
3 necessary. I mean, as a practical matter, severance has  
4 almost taken place as a result of the fact that the Court  
5 conducted the hearing on the motion to enter default  
6 judgment. The Court has that under advisement. The Court  
7 will be issuing a decision in that matter. Why does the  
8 motion to sever -- is that necessary at this point? Let me  
9 assist you as to where the Court's coming from. As I  
10 reviewed the motion to sever, it appeared that the motion,  
11 the stimulus for the motion to sever was the objection filed  
12 by the PA and the PLO to the hearing on the motion to enter  
13 default judgment, that plaintiffs were clearly upset by what  
14 they viewed as a last minute objection filed by the  
15 Palestinian Authority and the PLO to the hearing that was  
16 going to be taking place on July 12th. Plaintiffs had  
17 brought witnesses from Israel to testify, and plaintiffs  
18 were, as I've indicated, upset by this last minute objection.  
19 And as I read the motion, it was cast as an alternative  
20 motion, that if the Court did not strike the objection, did  
21 not overrule the motion for sanctions, then as an alternative  
22 the Court were entertaining an objection from the Palestinian  
23 Authority and the PLO and were inclined to delay the hearing  
24 based on that objection, then the fall back position of the  
25 plaintiffs was, "Sever the cases. Let's have -- let the

1 hearing go forward." Since the Court overruled the objection  
2 by the Palestinian Authority and the PLO, that's why I'm not  
3 clear as to why you are pressing the motion to sever.

4 MR. STRACHMAN: The issue, Judge, is that I believe  
5 it was in November, or September, of 2000 when we first filed  
6 a motion for default judgment against the Hamas defendants  
7 having been defaulted in, I believe, September of that year.  
8 We had asked the Court to go forward to final judgment and to  
9 obtain a judgment against the Hamas defendants. The Court  
10 ultimately granted our request, I believe in early June,  
11 setting the matter down for an evidentiary hearing. If the  
12 matter is not severed, if we are not -- if there's any  
13 mechanism or any obstacle to us obtaining a judgment against  
14 the Hamas defendants, then a ruling on the motion might be  
15 moot. I don't understand what the impact of that would be.  
16 We're trying to obtain judgment. We said that right from  
17 when we first filed the motion in the Fall of 2000, and the  
18 defendants, the PA and the PLO defendants', attempts to  
19 interfere with those proceedings, despite your Honor's  
20 request, raised certain issues as to whether we can obtain a  
21 judgment against the Hamas defendants. And, therefore, I  
22 believe we re-styled the motion after I think I incorrectly  
23 filed it initially as three motions together. We filed a  
24 separate motion requesting severance in a supplemental memo  
25 in which we indicated why we feel both the -- we have a need

1 for the judgment against Hamas following the hearing, and  
2 also how the issues raised by the PA and the PLO can be  
3 addressed.

4 For instance, this case is now almost on the verge  
5 of its three year anniversary. The Hamas defendants, the  
6 actual gunmen, and the organization of the gunmen were  
7 defaulted two-and-a-half years ago. This case, we fully  
8 expect, based on the types of re-filings and re-pleadings,  
9 and second motions and request for new motions and  
10 reconsiderations, et cetera, we fully expect that this will  
11 take years and years to resolve. It would be entirely  
12 prejudicial to the Ungars to allow the PA and the PLO to  
13 stymie their efforts to obtain judgment against not only the  
14 actual triggermen, but the triggermen who were defaulted  
15 two-and-a-half years ago, and those same triggermen who the  
16 Court heard evidence against in the form of damages evidence.  
17 If we don't obtain judgment, then it's unclear to me what the  
18 status of that hearing is. It was clear to me that when  
19 Judge Lagueux scheduled the hearing for July, or at least  
20 granted our request to schedule the hearing with your Honor  
21 for July, that we would be able to go forward and obtain a  
22 final judgment against the Hamas defendants. To allow, or to  
23 force them to wait simply because their threats of  
24 interlocutory appeals and the natural process of filing, you  
25 know, filing briefs, and response briefs, and the time it



1 takes to write decisions on these cases, which is -- and now  
2 we've had two full length decisions on this motion to  
3 dismiss, and to reallege these same kinds of issues, would be  
4 tremendously prejudicial to my clients. It's clearly not  
5 intended, or what was not intended by the Anti-terrorism Act  
6 of 1992, and the full legislative history has been briefed by  
7 the plaintiffs on several occasions in our responses to the  
8 motions to dismiss. The whole point was to allow victims of  
9 terrorism to obtain some type of judgment. If everytime you  
10 sue the gunmen and the supporting organizations to the  
11 gunmen, and the gunmen are clearly held to be liable both  
12 because of their convictions and their defaults, and then you  
13 have a situation where parallel defendants have an  
14 opportunity to thwart the litigation because of their style  
15 of pleading, it would run completely counter to what was  
16 intended. The Klinghoffer case took 12 years, and we fully  
17 expect this case is going to take 12 years with the PA and  
18 the PLO. There's no reason why the Hamas defendants, and  
19 particularly the Hamas organization, should not be held  
20 responsible, and we should not be able to obtain judgment  
21 against them. It's already been almost three years since  
22 they were first filed -- excuse me, since they were first  
23 served. So to that extent, I think severance is necessary.  
24 And I think all of the policy reasons for severance enure to  
25 the plaintiffs' favor. All of the considerations that the

1 defendants, the PA and the PLO have raised, can be addressed  
2 by severance. They would never be prejudiced. We've  
3 indicated on several occasions, both in a conference with the  
4 Court on July 11th, a memorandum of July 11th, in court on  
5 July 12th, and the reply brief that I filed in August of this  
6 year, and now that this is the way to ensure that their  
7 rights are protected. There would be no adverse implications  
8 to them in us obtaining judgment against Hamas. In fact,  
9 quite honestly, it's just the opposite. What they've been  
10 able to do, and if they obtain the transcripts, they'd be  
11 able to hear the testimony of all our clients that know what  
12 they're committed to saying in terms of, you know,  
13 depositions or using them at a trial down the road. They  
14 know who our experts, some of our experts are. They know  
15 what some of the documentary evidence is. The only prejudice  
16 would come to the, you know, the Ungar children, the Ungar  
17 families. So to me, as I reiterated during our conferences,  
18 or whenever this issue was raised, it's the, you know,  
19 harmonizing verse that rectifies each of the positions.

20 And if I could just conclude by saying the  
21 objections raised by the PA defendants in their  
22 one-and-a-half page memorandum are, as I said, I think  
23 they're anemic. I mean there's nothing there. There's  
24 nothing that they have raised in their pleading of August 2,  
25 for instance, that would indicate that we should not sever

1 the case. And, in fact, I think because of their own  
2 ambivalence, they expressed that ambivalence when we spoke  
3 with your Honor, I believe it was either the day, or --  
4 either July, I think it was July 11th when we had a telephone  
5 conference, and the procedure by which they actually even  
6 appeared in this matter on July 12th. You may recall that  
7 Mr. Sherman came, read a statement prepared by Mr. Schilling,  
8 that they had agreed, or they had -- that they had on their  
9 own indicated that they were not going to participate in the  
10 proceedings. Mr. Schilling said -- excuse me, Mr. Sherman  
11 said very clearly, "It is the option of the Palestinian  
12 defendants not to participate in the hearing. Accordingly,  
13 we intend not to participate." They chose not to  
14 participate. Now how then can they thwart us? How can that  
15 be used as a, as a sword against the plaintiffs for obtaining  
16 a judgment against parties that this Court defaulted over two  
17 years ago?

18 THE COURT: Mr. Strachman, did I hear you say that  
19 you re-filed the motion to sever?

20 MR. STRACHMAN: I think what happened, Judge, is --  
21 I know what happened is, when we received the motion to stop  
22 the proceeding on the 10th, I improperly filed a motion on  
23 three, requesting three or four types of relief on the 11th,  
24 shortly before our conference of that day, and then I  
25 separated those motions into, you know, into separate

1 motions, and then the defendants responded, and then we  
2 supplemented our motion in a sense by our reply memorandum in  
3 which we addressed their objections.

4 THE COURT: The motion that I have before me this  
5 morning is entitled plaintiffs' motion to Sever. It bears a  
6 file stamp of July 11, 2002. And the motion to sever, as I  
7 look at it, seeks only severance. And the certification date  
8 is that on July 11th it was faxed and mailed to Ramsey Clark  
9 and Deming E. Sherman, also to Mr. Schilling. That's the  
10 motion we have this morning, correct, Mr. Strachman?

11 MR. STRACHMAN: I believe so, your Honor.

12 THE COURT: All right. Mr. Sherman, is  
13 Mr. Schilling speaking for the defendants?

14 MR. SHERMAN: Yes.

15 THE COURT: All right. Mr. Schilling, it's your  
16 opportunity now to respond. I'd like to hear you on the  
17 motion to sever, please.

18 MR. SCHILLING: Yes, your Honor. I think the  
19 severance is not what Mr. Strachman is really talking about.  
20 I think what he wants is perhaps an entry -- separate entry  
21 of judgment under Rule 54(b), I think it is. Severance is  
22 not appropriate here. They chose to sue the PA and PLO.  
23 They are asserting that the PA and the PLO are jointly and  
24 severally liable on every cause of action. The action  
25 presents some common issues. I think his proper avenue,

1 procedural avenue, is to move under Rule 54(b), and then the  
2 advisability of the entry of the separate judgment can be  
3 briefed.

4 As I recall it, your Honor, you instructed us not  
5 to participate in the default judgment hearings against  
6 Hamas. We also made a statement that we would not  
7 participate, but I think that even if we had wanted to  
8 participate, your Honor had made a ruling against our  
9 participation. But I think it's a fairly simple thing that  
10 the severance is not what Mr. Strachman wants, and he's sort  
11 of procedurally in the wrong avenue.

12 We're also concerned, your Honor, with the posture  
13 of the case on appeal. We've indicated that we intend to  
14 take an interlocutory appeal. We think that the denial of  
15 immunity is something that is immediately appealable. And  
16 we've asked at a number of stages for a stay pending the  
17 taking of that appeal. I think that we will need to pursue  
18 this as a matter of fairness to the Court as well as in the  
19 interests of our clients. The case is in a peculiar posture,  
20 I think, because until the District Court rules on our motion  
21 for reconsideration, we can't -- I don't think we can take an  
22 appeal under Rule 4 of the Federal Rules of Appellate  
23 Procedure. So, if -- I think that presents a very tricky  
24 problem. But, we will, we will be seeking a stay in  
25 connection with our interlocutory appeal. If your Honor --

1 the orderly procedure would be to ask your Honor for the  
2 stay, to ask the District Court for the stay, and finally to  
3 ask the Court of Appeals for the stay. And that's all  
4 complicated by the fact that the motion for reconsideration,  
5 in our view, precludes the filing of an effective notice of  
6 appeal.

7 THE COURT: Mr. Schilling, I don't have before me a  
8 motion for a stay. I understand your argument, but it seems  
9 to me that you have pending before Senior Judge Lagueux a  
10 motion for reconsideration which you say he has not yet acted  
11 upon, and I think if you -- if I should rule adversely on any  
12 of the motions before me this morning, your avenue is to  
13 appeal my ruling to Judge Lagueux. And if at that time he  
14 has still not acted on the motion for reconsideration, you'll  
15 be in a position to raise that fact with him. I'm going to  
16 ask Mr. Strachman in a moment to respond to your Rule 54(b),  
17 or your suggestion that Rule 54(b) is the more proper avenue  
18 that the plaintiff should be pursuing here as opposed to  
19 severance.

20 But I wanted to ask you, that when you made  
21 reference to that there are common issues that may be  
22 considered on appeal, if there's no one who's going to be, to  
23 my knowledge at this point, appealing the entry of the  
24 default judgment against Hamas and the Hamas defendants,  
25 they're in default, they haven't answered, so it seems to me

1 that there may be an argument in favor of severance here.  
2 why not just at this point, to simplify matters, sever out  
3 Hamas, the Hamas defendants, if only to make the case  
4 somewhat more manageable? why isn't that a good avenue? why  
5 do we need to keep the Hamas and Hamas defendants in the case  
6 at this point since they're in default? There's certainly no  
7 indication they're going to be appealing the entry of default  
8 judgment since they've never appeared here. Could you  
9 respond to that question, please?

10 MR. SCHILLING: Your Honor, I think that the, that  
11 the Court has a proper concern over the entry of judgments  
12 that may be a nullity. If the Court of Appeals sees -- you  
13 know, you're quite correct, the Hamas people will not be  
14 appealing the judgments if they continue to stay away from  
15 the case, and we probably don't have standing to do so. The  
16 Court may feel on its own motion that the issuance of  
17 judgments, where personal jurisdiction is lacking, and  
18 judgments that would be a nullity, is a particularly  
19 unattractive thing for U.S. Courts to do and sort of foist  
20 off on the world, judgments that people can try to enforce, I  
21 suppose, anywhere in the world, and I think, therefore, that  
22 the Court of Appeals may well, you know, may well want to  
23 make some statement if they come to the conclusion that the  
24 judgments are, or some of them are a nullity. And then  
25 there's also, your Honor, the fact that they're seeking to

1 impose joint and several liability which we don't think we're  
2 going to be held liable here gives us some interest in  
3 recoveries that the plaintiffs seek, or that they flub. And  
4 then of course it was plaintiffs' choice originally to put  
5 everybody all in this suit. We think their theory is  
6 farfetched as far as the Palestinian Authority and the PLO  
7 are concerned, but it was their choice. And for all of those  
8 reasons, we think severance is uncalled for and unwise.

9 THE COURT: Thank you, Mr. Schilling.  
10 Mr. Strachman, would you go back to the podium? Would you  
11 respond to Mr. Schilling's suggestion that the more proper  
12 avenue here is Rule 54(b), entry -- a separate entry of  
13 judgment?

14 MR. STRACHMAN: Well, it's the first time the issue  
15 is raised, Judge, in their pleadings. It has never been  
16 raised in terms of this issue of severance either in their  
17 argument of July 12th, or their arguments in their motions.  
18 I don't believe so at all. I think severance is designed for  
19 exactly this type of situation where for -- and we've cited  
20 several cases that talk about very similar kinds of issues,  
21 and that is when, for housekeeping, to avoid prejudice, to  
22 have clarity, severance is exactly necessary. When this case  
23 was filed, we had no idea who would respond, what would  
24 respond, what the issues raised by any of the defendants  
25 would be. Now, it makes sense after their default. And



1 certainly even more so after we've had a default judgment  
2 hearing and presented evidence that severance is appropriate.

3           If I could just address one other issue that was  
4 raised by my brother. This Court did not tell anybody they  
5 could not participate in the hearing. Everybody was noticed  
6 of the hearing of July 12. Everybody had access to all of  
7 the documents, all of the evidence, a list of the witnesses  
8 who were testifying. They chose not to appear. And, in  
9 fact, at the end of the hearing, after Mr. Sherman had read a  
10 statement prepared by Mr. Schilling in which he said we  
11 choose not to participate in this proceeding, your Honor said  
12 at the end of the hearing, now that we are done with the  
13 preliminary issues you are excused, you are able to go, you  
14 don't have to sit through the rest of the hearing for the  
15 whole day. In fact, the other day that we went back, I think  
16 I believe the following Monday, nobody was told not to  
17 proceed. Nobody's rights were cut off. And, in fact, we  
18 fully expected that maybe they would appear. The PLO would  
19 appear. But, even to address that issue as we've represented  
20 in our brief, and as we represented during our conversation  
21 on July 11th concerning stopping the proceeding of the 12th,  
22 we've indicated very clearly that we -- and counsel discussed  
23 this, as well. The suggestion I think by your Honor was that  
24 counsel suggest some sort of stipulation or some sort of way  
25 around this. And Mr. Schilling and I had several

1 conversations about it. And that would be that the  
2 proceeding against Hamas would have no res judicata affect at  
3 all, no collateral estoppel affect. And that, in fact, there  
4 would be no binding -- that a judgment would not be binding  
5 in any way against the PA or the PLO if the case were  
6 severed. So I think those issues are significant. And it's  
7 --

8 THE COURT: Mr. Strachman, you're alluding that you  
9 had these discussions. Is there an agreement to that effect  
10 that if the Court grants the motion to sever that it would  
11 not be res judicata or binding in terms of the Palestinian  
12 Authority and the PLO?

13 MR. STRACHMAN: I believe I suggested that, and I  
14 believe I'm the one who suggested that on July 11th and  
15 that's during our telephone conference. That's what prodded  
16 your Honor to, I think, suggest that the parties speak  
17 afterwards and see if we could work out a stipulation.  
18 No such stipulation was entered or drafted, but we've said  
19 that. We said that months ago in our brief, that we would  
20 stipulate to that. If the cases were severed there would be  
21 no prejudicial affect against the PA. And, in fact, 12 years  
22 from now, if they -- and I've said this repeatedly, if they  
23 need to re-litigate it, they have all of our clients, they  
24 have their depositions taken, they know what they're going to  
25 say, and that's why I believe severance is vital because it

1 preserves their interests and it preserves my client's  
2 interests. And it's that third harmonizing verse that does  
3 what both parties want. Thank you.

4 THE COURT: So plaintiffs are willing to stipulate,  
5 agree, that if the Court grants severance, grants the motion  
6 to sever, that it will not have any prejudicial affect  
7 against the Palestinian Authority and the PLO?

8 MR. STRACHMAN: We would hope that we could do  
9 that. That we could obtain a ruling from your Honor in terms  
10 of the evidence that we presented, obtain a final judgment.  
11 We've said that on our briefs, two separate judgments, two  
12 separate case numbers, different parties.

13 THE COURT: All right. Thank you, Mr. Strachman.

14 MR. STRACHMAN: Thank you.

15 MR. SCHILLING: Your Honor, may I address one  
16 point?

17 THE COURT: Yes, Mr. Schilling. Briefly, please.

18 MR. SCHILLING: Yes. In the transcript of the July  
19 12th proceeding, your Honor states, "I've made my ruling that  
20 I am not going to allow the PA and PLO to participate in this  
21 hearing nor to voice objections to the proceeding going  
22 further." And I think your Honor had earlier said pretty  
23 much the same thing. That's my recollection. I think it's  
24 probably Mr. Sherman's recollection, recollection as well.  
25 We certainly would carefully study if Mr. Strachman is

1 willing to make that stipulation about no prejudice. We  
2 would carefully study it to see whether it protects us  
3 adequately. But there's still the problem of their seeking a  
4 joint and several liability. And the other problem I  
5 mentioned about the possibility that judgments that are a  
6 nullity will be issued that the Court has in the interest of  
7 the administration of justice, and as matter of the  
8 reputation of the U.S. Courts that may be a concern.

9 THE COURT: All right. Thank you, Mr. Schilling.  
10 Before the Court is plaintiffs' motion to sever. The Court  
11 wants to look at Rule 54(b) before it makes the ruling on  
12 this motion. I will do so immediately after the hearing  
13 concludes this morning. I'll issue a ruling within 24 hours  
14 on this motion. And the Court will issue an Order setting  
15 forth its ruling.

16 Now, Mr. Strachman, referring to the motion to  
17 strike and the motion for sanctions, you indicated -- are you  
18 withdrawing those? Are they moot? I need -- the Court needs  
19 to do something with the motions. Do you agree they're moot?

20 MR. STRACHMAN: I think they are, Judge. I think  
21 they're all but --. Yeah, I think they are, Judge.

22 THE COURT: All right. The Court's going to rule  
23 the motion to strike and the motion for sanctions as being  
24 moot.

25 We'll now proceed to plaintiffs' motion to compel

1 discovery. Mr. Strachman, I'll hear from you briefly on  
2 that, please. I've read the memorandum.

3 MR. STRACHMAN: Thank you, your Honor. We filed  
4 discovery, your Honor, in the form of interrogatories,  
5 request for production of documents, and request for  
6 admissions on January 24. Sometime later the PA and PLO  
7 moved for a protective order. That matter was heard, I  
8 believe, in a conference on the telephone, I believe,  
9 following which an Order entered on June 20, and on June 20  
10 --

11 THE COURT: Of 2002?

12 MR. STRACHMAN: Of 2002. All of our discovery was  
13 filed on January 24 of 2002. Sometime later a motion for  
14 protective order was filed, a renewed motion, and a motion  
15 for leave to seek a protective order. And in June of this  
16 year your Honor ruled that discovery is stayed until Judge  
17 Lagueux had issued -- has issued a ruling on the Palestinian  
18 defendants' motion to dismiss. That ruling came on November  
19 4th. There have been no specific objections raised to any of  
20 the specific requests in the discovery.

21 We also noticed, I believe, eight depositions for  
22 the end of March, and those were also the subject to the PA  
23 and PLO's motions for protective order. It is now over a  
24 month since Judge Lagueux issued his ruling. We would ask  
25 this Court to issue an order allowing discovery. If the

1 defendants need a couple of weeks -- we're not here to argue  
2 about a day or two here or there, but we would like an order  
3 saying that they've got to comply by a certain date, and then  
4 after which we would like an order allowing us to go forward  
5 with the depositions, which we had initially scheduled beyond  
6 the period for response to the interrogatories, request for  
7 the production of documents, and would also ask for a ruling  
8 on the request for admissions because it is my understanding  
9 that now having, I believe it's 38 days past without a  
10 specific response to request for admissions, that each of the  
11 items should be deemed admitted.

12 THE COURT: 38 days from what day are you counting?

13 MR. STRACHMAN: 11/4, which was the day that Judge  
14 Lagueux issued his ruling.

15 THE COURT: Thank you.

16 MR. STRACHMAN: Thank you.

17 THE COURT: Mr. Schilling, I'll hear you now on  
18 plaintiffs' motion to compel discovery.

19 MR. SCHILLING: Yes. Your Honor, we attempted to  
20 reserve our ability to move for a protective order that took  
21 specific issue with the defect and excesses of the requests  
22 that the plaintiffs were making. In the argument before  
23 Judge Lagueux, I think it was in June, I made the statement  
24 to him, I got the transcript in front of me, their discovery  
25 requests plaintiff has made, they cover the waterfront. And

1 the Judge said, well, these will be dealt with later by the  
2 Magistrate Judge. I take that to mean the first order of  
3 business, if discovery proceeds, is for us to file a motion  
4 for a protective order that points out why it's uncalled for,  
5 for seven officials of the Palestinian Authority and the PLO  
6 to come to Rhode Island for their deposition, and why very  
7 broad interrogatories and production requests should not be  
8 cut down.

9 In a sense there are two aspects to the case. One  
10 is what happened to the Ungars, and the second is the attempt  
11 that the plaintiffs seem to want to make in this and other  
12 cases to show that the PA and the PLO are engaged in a wide  
13 range of terrorist activities. Of course we disagree with  
14 that, but we think therefore the scope of their requests are  
15 way out of line, and we've consistently said that we should  
16 be able to point that out. There may be privileges as well  
17 that can be invoked, even if the PA and PLO held not to be a  
18 foreign state. We think, as you know, we think that they  
19 should be so held. There may be governmental privileges.  
20 This is a functioning government and there may be  
21 governmental privileges that affect some of the requests.  
22 There's also the problem of the destruction that's taking  
23 place of offices and courts and facilities in the occupied  
24 territories, and that creates a further, very likely a  
25 further basis for the protective order.

1           So, again, subject to our overall position, there  
2     should be a stay because immunity is a -- to protect against  
3     litigation as well as jurisdiction, and having to make the  
4     motion for a protective order that deals with all the details  
5     of the extensive discovery that they've, in our view,  
6     improperly sought, that having to make such a motion before  
7     the immunity defenses are definitively disposed of. We think  
8     it's contrary to the weight of authority. But passing that  
9     for the moment, we think that we should have full opportunity  
10    to take issue with the appropriateness of their discovery  
11    requests.

12           THE COURT: Why haven't you done that up to  
13    this point, Mr. Schilling?

14           MR. SCHILLING: Well, when we raised it before  
15    the Judge he said that these will be dealt with later by the  
16    Magistrate Judge, and that's been our sense all along, and  
17    we're still hoping when we make our motions for a stay we  
18    will still try to convince the Court that considering those  
19    motions that it's the essence of immunity for a litigant not  
20    to have to get into these details of discovery until immunity  
21    is finally determined. It comes up all the time in these  
22    qualified immunity cases against government officials, and  
23    there's quite a bit of authority on it. We've cited one  
24    First Circuit case. It may not be the best one but we've  
25    cited it for the view that immunity comes first. And that's



1 why the interlocutory appeal is available.

2 THE COURT: Mr. Schilling, Judge Lagueux's  
3 statement that discovery matters would be addressed by the  
4 Magistrate Judge later would still not prevent the defendants  
5 from filing the objection to the discovery which was sought  
6 by the plaintiffs raising these particular objections that  
7 you've alluded to this morning, that the information or  
8 discovery sought is overbroad, it hinges on privileges, there  
9 are problems because of physical destruction to the  
10 defendants' offices. You certainly could have raised these  
11 objections. In fact, the normal course of things is to file  
12 the objection setting forth the grounds for the objections  
13 and not to wait for a scheduled hearing on a motion to  
14 compel. Indeed, under the rules, if you don't object, then  
15 the objections can be deemed waived.

16 MR. SCHILLING: Well, your Honor, again I would say  
17 that we made clear on our motion for leave -- we made a  
18 motion for leave to file a protective order and we made the  
19 point that we thought it would not be orderly for us to have  
20 to object to the specifics of their discovery, and that we  
21 also have sought a stay at every point because I think the --  
22 I may be repeating myself, the immunity defenses are intended  
23 as defenses against the need for a party to respond to  
24 specific discovery requests. But if we go back to the  
25 language of our -- we also, I think, made an earlier motion

1 for a stay and leave to seek a protective order. That is  
2 docket number 60. We made a defendants' renewed motion for a  
3 stay and motion for leave to seek a protective order, and I  
4 don't know that that one's ever been actually ruled upon, but  
5 it's been our position all along that, you know, that it  
6 would be appropriate and necessary once the immunity defense  
7 was disposed of for us to take issue with many many very  
8 doubtful discovery requests either by way of depositions or  
9 interrogatories or requests to produce or admissions. We  
10 certainly think that we've overall preserved, or sought to  
11 preserve, our ability to do so, and it's still our position  
12 that at this point having to make such a motion which  
13 addresses the specifics and defects in the production and  
14 discovery that they seek is something that should await the  
15 disposition of the immunity defenses.

16 THE COURT: Disposition of the immunity defenses by  
17 whom? I mean, Judge Lagueux has ruled, has he not?

18 MR. SCHILLING: Well, we got the motion for  
19 reconsideration pending with a request for a stay, and the  
20 stay we request is a stay pending the determination of the  
21 motion for reconsideration and the appeal that was taken  
22 thereafter. I think we've got other -- our motion number 60  
23 for a stay and leave to seek a protective order may still be  
24 operative.

25 We filed a later motion for a protective order

1 because we weren't completely sure that the renewed motion  
2 for a stay and for leave to seek a protective order covered  
3 it completely. So we had those two motions which I think  
4 made clear that we certainly intended to, you know, preserve  
5 our ability to raise specific objections to the discovery  
6 sought by the plaintiff.

7 THE COURT: Mr. Schilling, Mr. Sherman wants to say  
8 something.

9 MR. SHERMAN: Your Honor, just to bring your  
10 attention that the motion for protective order that he just  
11 referred to is dated February 26, 2002, and was filed with  
12 the Court on that date. There were two motions. There was a  
13 motion, defendants' renewed motion for a stay and motion for  
14 leave to seek a protective order. Mr. Schilling referred to  
15 that. That's dated February 5, 2002.

16 MR. SCHILLING: Right. That's number 60.

17 MR. SHERMAN: That's correct. And then after that,  
18 on February 26th, for the reasons that Mr. Schilling  
19 indicated, we filed the Palestinian defendants' motion for a  
20 protective order. It's dated February 26, 2002, filed on  
21 that day with a supporting memorandum. And those were filed  
22 to assure protection of waiver of objections.

23 THE COURT: Were those motions granted?

24 MR. SHERMAN: No. In fact, we thought -- I thought  
25 at least this one that's before you this morning.

1 THE COURT: Thank you, Mr. Sherman. Mr. Schilling,  
2 have you completed your argument?

3 MR. SCHILLING: I think so, your Honor. Yes. Can  
4 you hear me?

5 THE COURT: Yes, I can. I'm sorry, Mr. Schilling,  
6 I should have acknowledged your statement.

7 MR. SCHILLING: My phone seemed to have gone dead.  
8 I was just worried.

9 THE COURT: There was silence in the courtroom,  
10 Mr. Schilling, while I reflected on the situation.

11 Mr. Strachman, I'll give you a chance, if you'd  
12 like to be heard, briefly. Before I hear from you,  
13 Mr. Strachman, Mr. Schilling, how much time would you need to  
14 file your specific objection to the motion to compel  
15 discovery that you've alluded to? There being overbroad,  
16 matters of privilege, et cetera, how much time would you need  
17 to file your memorandum setting forth your specific  
18 objections?

19 MR. SCHILLING: It's hard to say, your Honor. I  
20 think at least 30 days. That might not be enough if we had  
21 any factual inquiries to pursue overseas. But I think I  
22 should say, your Honor, we would seek a stay if you issued  
23 such an order. I mean no disrespect but I began at the  
24 beginning by saying that I wanted to advise the Court that we  
25 think we're entitled to a stay and we're entitled to an

1 appeal, and that would be our first reaction to seek a stay,  
2 but getting back to -- I'm not sure we can do it in 30 days  
3 but we can certainly respond to a great deal of it, and if we  
4 need more time, we would advise the Court and show why we  
5 needed more time. So I would say subject to the fact that we  
6 will try to get a stay, I would say 30 days would give us a  
7 very good start. Did I express myself clearly, Judge?

8 THE COURT: I believe so, Mr. Schilling. What I  
9 hear you saying is that your first and foremost position,  
10 there should be a stay, that you should not have to respond  
11 to discovery at all.

12 MR. SCHILLING: Until the immunity issues are  
13 determined, yes.

14 THE COURT: And that --

15 MR. SCHILLING: And that's one of the reasons why  
16 the interrogatory appeal is available in immunity cases,  
17 including qualified immunity cases involving U.S. government  
18 officials.

19 THE COURT: And so that even if I were to make a  
20 ruling directing that you file your specific objection to the  
21 motion that compels discovery to the, I gather  
22 interrogatories and request for deposition -- first, let me  
23 deal with that in part. I gather there are outstanding  
24 interrogatories.

25 MR. SCHILLING: Yes, your Honor.

1 THE COURT: If I ordered that you file a response  
2 to those interrogatories within 30 days and to raise all the  
3 objections that you've alluded to this morning, your response  
4 to that order would be to appeal it to Judge Lagueux and  
5 argue that you should not even have to, at this point, raise  
6 specific objections to the interrogatories, that the  
7 proceedings should be stayed. Basically the discovery  
8 proceedings should be stayed in their entirety. Is that your  
9 position?

10 MR. SCHILLING: Yes. That is -- that is our  
11 position, Judge, and that's why I stated it at the very  
12 beginning.

13 THE COURT: All right. Thank you, Mr. Schilling.  
14 Mr. Strachman, what I'd like to hear from you on is this,  
15 normally a failure to raise specific objection to  
16 interrogatory, interrogatories, of the objection to the type  
17 that Mr. Schilling has stated orally in his remarks this  
18 morning that the requests for interrogatories are overbroad,  
19 they infringe on privileged material, normally a failure to  
20 have made these objections earlier might well be deemed to be  
21 a waiver, at the same time I'm thinking about the travel of  
22 this case, numerous requests for stays, a good deal of time  
23 has gone by, and the Court has some concern that even though  
24 the defendants probably should have filed a written  
25 objection, specific written objections to the interrogatories

1 prior to this time, I'm considering ordering that they file  
2 such specific objections within 30 days. Having told you  
3 that's what I'm thinking about doing, please tell me what  
4 your position is regarding that. If you oppose it, I think  
5 you probably do, tell me why.

6 MR. STRACHMAN: Well, there are a few reasons,  
7 Judge. First, your Honor, the length of time that has  
8 occurred between January 24 and today inures to my clients'  
9 favor. They've had ten months to figure out specific  
10 objections. They should have had objections ready to go if  
11 they had specific objections to interrogatories, to request  
12 for documents, to admissions, to certain depositions. They  
13 should have had them ready to go because they knew that your  
14 Honor stayed discovery five months after we requested it, and  
15 six months later there is a decision by Judge Lagueux, and at  
16 a minimum they should have been ready to go with them.  
17 They've now had 38 days and they come to the court  
18 empty-handed. Your Honor scheduled five specific motions.  
19 We discussed those five specific motions ten days ago on a  
20 telephone call. Now they're raising issues for motions that  
21 are not scheduled for today that were filed in large measure  
22 addressed by your Honor's stay of June of this year. So  
23 they've had a tremendous amount of time to deal with all  
24 these issues.

25 Second of all, they're making very specific factual

1 recommendations. In each of those -- excuse me, factual  
2 allegations about their inability to comply and privilege, et  
3 cetera. None of those issues are proven in any of the  
4 motions that they have filed. And if they were, if they had  
5 that information, they should have brought it to the Court.  
6 You can't just make bald allegations to the Court and expect  
7 that everyone is going to accept them just because there is  
8 some distance between here and where Mr. Arafat operates. He  
9 is responsible to the Court here. Judge Lagueux has said  
10 that now twice, and almost three years we've waited to  
11 proceed with this. So their style of litigation is simply to  
12 put things off, to pass it on, to ask for another time. They  
13 have no intent, and Mr. Schilling was very honest in saying  
14 he has no intent with complying with even a 30 day order, so  
15 let's make it 5 days, let's make it 2 days, because they  
16 intend to seek an appeal. Their interlocutory appeal was  
17 just denied by Judge Lagueux. He said they have not met the  
18 criteria for an interlocutory appeal. They've added nothing  
19 in their motion for reconsideration that would suggest  
20 they're entitled to that. They don't come to court with  
21 clean hands saying Strachman was overbroad in numbers 1  
22 through 5 but here's what we can exchange. We can't give you  
23 these 8 people for depositions but we can give you these two  
24 people. We can't do the depositions in Providence but we  
25 could do them in Italy, we could do them in Ramallah, we



1 could do them in Jerusalem. I mean, they come with nothing.  
2 And to sanction this type of behavior when they polite but  
3 effectively brazenly suggest that the rules don't mean  
4 anything, the Court orders don't mean anything, your order  
5 was very specific in June. It said until Judge Lagueux gave  
6 a ruling. He gave a ruling. And I'm not here to quibble  
7 about a day or two. That's not our issue, whether it's 38  
8 days or 30 days. But the point is just to continue this to  
9 go on and file these straw man motions to, you know, requests  
10 for allowance to file a motion for a stay so it makes it look  
11 like there are all these procedural impediments until we can  
12 actually get to the rules and get to the meat of this case,  
13 is a style that I would urge the Court not to sanction any  
14 further in this case. All of the fundamental issues, and  
15 there were considerable issues, and they were legitimate  
16 issues, but those issues have now been decided and ruled on  
17 in two very lengthy decisions by Judge Lagueux, obviously  
18 well thought out, obviously very detailed. We've briefed  
19 them extensively. The parties have. Judge Lagueux thought  
20 them out in a very detailed fashion. At some point the ax  
21 has got to drop and the rules and the Court orders and the  
22 normal procedures have to mean something to these plaintiffs  
23 otherwise we're all just wasting our time and the rules don't  
24 mean anything. Thank you.

25 THE COURT: Thank you, Mr. Strachman.

1 MR. SCHILLING: Your Honor?

2 THE COURT: Yes, Mr. Schilling.

3 MR. SCHILLING: I'm at a disadvantage here on the  
4 telephone, I can't see whether Mr. Strachman is making these  
5 arguments with a straight face, but I'll assume he is.

6 Judge Lagueux passed on certification of an  
7 interlocutory appeal. He did not address an interlocutory  
8 appeal as a right, which we think is available to us, and has  
9 been mentioned in our prior pleadings. We think the motions,  
10 Number 60 and Number 63, for leave to have a protective order  
11 that would give us leave to raise objections, that both of  
12 those motions made perfectly clear that we wished to preserve  
13 our right to make objections. We don't think it is at all  
14 disrespectful to say that we will seek a stay. We believe  
15 we're entitled to a stay as a matter of immunity law, and  
16 that's why I began at the beginning by saying that. And we  
17 also think Judge Lagueux's comment, when I say that their  
18 request covered the waterfront, and he said, "Well, that's  
19 for the Magistrate." That implicit in that was -- although  
20 it's certainly not a ruling, it was a offhand remark, an  
21 acknowledgment that the objections to discovery have yet to  
22 be addressed.

23 THE COURT: Thank you, Mr. Schilling. The Court is  
24 ready to rule on the plaintiffs' motion to compel discovery.

25 The defendants argue that the Court should defer

1 action on the motion to compel discovery because there's  
2 presently pending a motion for reconsideration before Judge  
3 Lagueux of his November 4, 2002 ruling. The Court had  
4 previously indicated at the telephone conference with  
5 counsel, I believe on or about December 2nd the date was,  
6 that it would not delay this hearing.

7 I have listened to the arguments made by defense  
8 counsel. I appreciate defense counsel's candor that any  
9 ruling this Court makes which is favorable to the plaintiffs  
10 will result in an appeal.

11 The Court expressed some concern. It certainly  
12 does not want to unfairly prejudice the defendants. The  
13 defendants claim they have specific objections to the  
14 interrogatories that have been propounded, that they're  
15 overbroad, that they impinge on privilege areas, and that the  
16 defendants should have the right to file specific objections  
17 to those interrogatories, and suggest either that they have  
18 not had the opportunity to do so or did not understand that  
19 they were obligated to do so, that they were under the  
20 impression that a stay was in effect, or that because a stay  
21 had been requested there was no obligation on their part to  
22 file specific objections to the interrogatories that had been  
23 propounded. The Court is not persuaded by that argument.  
24 The Court agrees with the plaintiffs that the stay that this  
25 Magistrate Judge granted expired with the ruling by Judge

1 Lagueux on November 4, 2002, and clearly defendants should  
2 have, at least at that point, recognized that they needed to  
3 file a response to the motion to compel discovery that would  
4 include the specific objections. Certainly after the Court  
5 confirmed that this hearing on the motion to compel was going  
6 to go forward, the defendants were on notice that if they had  
7 specific objections to interrogatories, this would be the  
8 time to raise it and not simply orally during the course of  
9 the hearing this morning state that they have objections not  
10 otherwise reduced to writing regarding the interrogatories.

11 I'm going to grant the motion to compel discovery  
12 at least to the extent to require a response to the  
13 interrogatories. In recognition of the fact that there are  
14 geographical distances that separate defense counsel from the  
15 defendants, I will increase the period of time within which  
16 the defendants have to respond to a period of 45 days from  
17 today's date, that they must file a response to the  
18 interrogatories.

19 MR. SCHILLING: Your Honor, may that response  
20 include objections?

21 THE COURT: I'm thinking, Mr. Schilling. (Pause)  
22 I'm going to answer that, Mr. Schilling, by the following: It  
23 may include objections but the Court may well rule that  
24 you've waived those objections by the failure to file them  
25 prior to today's date. Since I don't have before me the

1 specific interrogatories that have been propounded, I have no  
2 way of knowing whether among the interrogatories there's one  
3 that on its face is just clearly so overbroad and so  
4 burdensome that even though a specific objection was not  
5 posed to it that the Court might deem that it should not be  
6 complied with. So your response may include objections but  
7 defendants are on notice that the Court may well deem that  
8 the objections have been waived by the failure to raise them  
9 prior to today's date, and it would probably take a -- I'll  
10 leave it at that. You're on notice that the Court may rule  
11 that you've waived it, but I will not prohibit you from the  
12 response from including an objection. I've already indicated  
13 I felt the defendants were remiss, at a minimum, at not  
14 filing the objections prior to today, at least by the time of  
15 this hearing, but defendants may include objections in their  
16 response, but they're on notice that the objections may be  
17 deemed to have been waived.

18 MR. SCHILLING: I request perhaps also that you  
19 look at the motions that are 60 and 63 and consider whether  
20 those motions preserve the ability to make objections to  
21 discovery.

22 THE COURT: Well, I don't feel the need to do that  
23 this morning, Mr. Schilling. That can be -- at the point, if  
24 your responses contain objections, and the Court is  
25 considering the issue of whether or not you waived those

1 objections by not previously making them, you may direct the  
2 Court's attention to documents 60 and 63 and urge that  
3 somehow those documents preserved your ability to raise  
4 objections, but I'm not going to make a ruling on that this  
5 morning.

6 MR. SCHILLING: Okay. Your Honor, I think I know  
7 the answer to this but I think I need to ask, will your Honor  
8 grant a stay pending appeal of the order that you've just  
9 entered so that we have time to go to the District Court that  
10 doesn't run against us as far as the 45 days go?

11 THE COURT: No, I'm not, Mr. Schilling. I'm not  
12 going to do that because you've indicated that no matter what  
13 order I enter you're going to appeal it, and it is -- there  
14 really is a need to get this case moving forward.

15 Plaintiffs' counsel is correct that this case has been  
16 pending a long time. There really is a need to start moving  
17 forward. You want to get this matter essentially in front of  
18 Judge Lagueux, and you can get it in front of Judge Lagueux  
19 simply by appealing my order.

20 Also, I don't think it's appropriate that if I stay  
21 the order, in effect it negates what I'm trying to do here.  
22 I'm trying to get this case to move forward. I'm trying to  
23 get the defendants to respond to the discovery. That's what  
24 the plaintiffs have asked the Courts to do. I think the  
25 plaintiffs' motion is a valid motion, it's a valid request,

1 so no, I will not stay the order pending your appeal. You  
2 may appeal the order.

3 MR. SCHILLING: I understand that, your Honor. I  
4 needed to ask for the stay because that's, I guess, a  
5 predicate for our asking the District Court for a stay if  
6 that's what we decide to do.

7 THE COURT: The order may reflect that the  
8 defendants' request that the order be stayed was denied by  
9 the court.

10 MR. SCHILLING: Thank you, your Honor.

11 THE COURT: I feel the need to address the request  
12 for depositions that the motion to compel also raises. I'm  
13 going to grant the motion to compel discovery as to requiring  
14 the defendants to produce their employees for depositions.  
15 Again, however, I will factor in the distances and the  
16 arrangements that need to be traversed to accomplish this,  
17 and I will direct that the depositions -- 60 day notice on  
18 the depositions, Mr. Strachman. You must give at least 60  
19 days notice for any scheduled deposition.

20 MR. STRACHMAN: Excuse me, your Honor. And the  
21 depositions will be here in Rhode Island?

22 THE COURT: Do all the people that you want to  
23 depose have the ability to -- can they enter the United  
24 States, or are some of these people prohibited from entering  
25 the United States?

1 MR. STRACHMAN: Many of those people have been in  
2 the United States since this case was filed. I don't know  
3 the exact situation of each and every person. One individual  
4 I believe is being incarcerated by the Israelis now,  
5 Mr. Beruti. We can take his deposition in Israel. But  
6 there's been nothing proffered to this Court, no evidence  
7 that they can't leave -- can't arrange their depositions  
8 here. So I think, I respectfully request, that they be  
9 ordered to appear here. If there's some issue that arises,  
10 they can -- the defendants can always move to change the  
11 location, to reschedule, but there's been nothing. In fact,  
12 one of the interesting things that happened in this case was  
13 that Mr. Arafat was in New York while one of our motions was  
14 pending and my brother, Mr. Schilling, attached his  
15 statements at the U.N. to one of his briefs. So we know he  
16 was in the United States. We know other PA officials have  
17 been in the United States in Washington and New York.

18 MR. SCHILLING: Your Honor, we also know that  
19 President Arafat has been virtually imprisoned in Ramallah by  
20 Israeli military forces, you know, in a manner that's illegal  
21 and outrageous. We strenuously urge that we be allowed to  
22 make objections, raise objections to these interrogatories.  
23 They're the leaders of the Palestinian Authority and the PLO.  
24 There's no showing that they know anything at all about this  
25 case. And we think it's abusive, and part of our papers make



1 reference to the fact that Mr. Strachman and his Israeli  
2 attorney believe that they're conducting a war against the  
3 Palestinian Authority and the PLO. There are several other  
4 cases that are pending down in the District of Columbia in  
5 which they're attorneys for the plaintiffs, and in context  
6 these depositions are, you know, unwarranted and abusive.

7 THE COURT: Mr. Strachman, the Court's ruling is  
8 that you may notice the depositions for the District of Rhode  
9 Island. The defendants may file objections to the location  
10 of the depositions. They may also file objections to the  
11 purpose of the deposition. I heard Mr. Schilling say that  
12 some of these people know nothing about the alleged matters  
13 and controversy. The way for the Court to focus on these  
14 issues is to know specifically which individuals we're  
15 talking about, the purpose of that deposition, and then I can  
16 consider the objections that the defendants have both as to  
17 the location of the deposition and the nature of the  
18 deposition, what's being sought.

19 So the ruling is you must give 60 days notice of  
20 any deposition. You may notice it for the District of Rhode  
21 Island. Mr. Schilling, the defendants must then respond to  
22 the notice of deposition either by indicating that he  
23 personally will appear or that he will not appear, that they  
24 want the deposition conducted in Israel or some other  
25 location, and if there are objections to the deposition

1 itself, set forth what those objections are, and then I will  
2 schedule a hearing and will address the objections. Is that  
3 part of the ruling clear to you, Mr. Schilling?

4 MR. SCHILLING: Yes, yes, sir. I think it is. To  
5 be consistent, I would ask your Honor for a stay of that  
6 order.

7 THE COURT: Well, this is all part of the motion to  
8 compel discovery. The motion to compel discovery seeks a  
9 response to interrogatories, and I gather also seeks to  
10 require the defendants to produce their employees for  
11 depositions. And so it's all part of the order granting the  
12 motion to compel discovery, and I'm denying your request for  
13 a stay on my order granting the motion to compel discovery.  
14 So it's a single order, but I note your request again for a  
15 stay, and I again deny it.

16 Lastly, we have the matter of the requests for  
17 admissions. I'm going to require that the defendants file a  
18 response to the request for admissions within 45 days. To be  
19 consistent with my previous ruling, the defendants may raise  
20 objections to the request for admissions, however, the Court  
21 may rule that their failure to previously prior to this date  
22 file objections may have constituted a waiver. But the Court  
23 again doesn't have before it a list of admissions that are  
24 requested, and it's conceivable that the Court might find  
25 that there's a basis as to one of them, or perhaps more, that

1 the objection might be valid. But I am going to require that  
2 the defendants file a response to the request for admissions  
3 within 45 days. And to save you the time, Mr. Schilling,  
4 your request for a stay of that portion of the order is also  
5 denied.

6 MR. SCHILLING: Thank you, your Honor.  
7 Mr. Strachman, I'd ask that you prepare the Order granting  
8 the plaintiffs' motion to compel discovery. The Order should  
9 reflect that the motion has been granted by the Court. The  
10 defendants are ordered to respond to the interrogatories  
11 previously propounded within 45 days from today's date. They  
12 are also to respond within 45 days from today's date to the  
13 request for admissions. The defendants may include in their  
14 responses or answers to interrogatories and also to the  
15 request for admissions objections to both the interrogatories  
16 and the request for admissions, however, the Court has  
17 notified the defendants that the Court may deem those  
18 objections to have been waived by the failure of the  
19 defendants to file objections prior to the hearing today  
20 which is being conducted on December 12, 2002.

21 The Court also grants the motion to compel  
22 discovery to require the defendants to produce notice to  
23 employees for depositions on the following condition, that  
24 the plaintiffs give at least 60 days notice of the scheduled  
25 depositions. The plaintiffs may notice the depositions for

1 the District of Rhode Island. The defendants shall then  
2 respond to the notice for the depositions by indicating  
3 either that the person will be produced to the District of  
4 Rhode Island or by filing objection to the notice, and the  
5 objection shall set forth the grounds for the objection,  
6 whether it be the location of the objection or the very fact  
7 the person is being deposed and why he should not be deposed.  
8 Is that clear?

9 MR. STRACHMAN: Yes. We also asked your Honor for  
10 request for production of documents, and I believe --

11 THE COURT: I didn't see that.

12 MR. STRACHMAN: If you could just include that with  
13 the same terms and conditions.

14 THE COURT: Yes, the Court does. I will require  
15 the request for documents to be responded to within 45 days  
16 from today's date. Again, objections by the defendants can  
17 be raised to the request for production of documents, but  
18 also again the Court may deem those objections to have been  
19 waived by virtue of the defendants' failure to previously  
20 have filed the objections. Does that address all the relief  
21 sought in the motion to compel discovery, Mr. Strachman?

22 MR. STRACHMAN: Yes, your Honor.

23 MR. SCHILLING: And, your Honor, could the Order  
24 also include that we requested a stay and the stay was  
25 denied?

1 THE COURT: Yes. Mr. Strachman, please include the  
2 fact that the defendants sought a stay of the Order so they  
3 could appeal it, and the Court denied that.

4 All right, we'll now go to the plaintiffs' petition  
5 for issuance of letter of request for judicial assistance.  
6 Mr. Schilling, I'm going to change the procedure here because  
7 I've read the filing by the petition. I'd rather hear first  
8 your objection to it. Do defendants still object to that  
9 petition for issuance of letter of request for judicial  
10 assistance?

11 MR. SCHILLING: I would make a couple of  
12 observations, your Honor, but subject to the observations I  
13 don't think we would object to it. It's my understanding  
14 that, you know, Mr. Strachman commenced an action in the  
15 D.C. court on behalf of the Ungars against Iran and Iranian  
16 officials and agencies on the theory that their support of  
17 Hamas was a proximate cause of the deaths of the Ungars, and  
18 my understanding is, although I don't know if it's a matter  
19 of direct knowledge, that he has the documents that are being  
20 requested in the letter of request that we're discussing in  
21 this case.

22 In his request, he says that copies of all of the  
23 documents will be furnished to defendants. We did not  
24 receive any documents in the Iranian case, of course, because  
25 we were not parties to the Iranian case. I would ask that we

1 also receive copies of any requests that Mr. Strachman makes  
2 to Israel. You know, in the ordinary course, a Government  
3 that gets a Hague request has no direct interest in the case  
4 and can, you know, there's no question that they would be  
5 impartial in their response. Israel, though, does have an  
6 interest in these cases, and has time and time again  
7 expressed hostility toward the Palestinian Authority and to  
8 the PLO, so we can't really blindly accept the notion that  
9 their selection of documents is going to be completely  
10 impartial, and free of irregularities. To guard against  
11 that, I guess we would ask that your Honor direct the  
12 plaintiffs to give us copies of any communications that they  
13 make to Israel in connection with this request that has to do  
14 with the documents to be requested, the scope of the request  
15 and so forth, so we can as best we can protect ourselves  
16 against a selective response that is organized unfairly to  
17 our detriment. But as I say, I think they have the  
18 documents, and if we get copies, and the request is processed  
19 fairly and transparently, we know exactly what communications  
20 have been made. I think subject to those points we have no  
21 objection.

22 THE COURT: Mr. Strachman, could you respond,  
23 please?

24 MR. STRACHMAN: I think -- I'm somewhat concerned.  
25 I think that perhaps we should make this a joint request and

1 perhaps we should have the PA then join us in making this  
2 request of the Director of Courts in Israel so they can have  
3 direct access to the authorities who provide the information,  
4 they could receive the information directly from the Israeli  
5 authorities. We attached to our supplemental memorandum a  
6 letter from Mr. Zeitman of that office. This was provided to  
7 Mr. Schilling in December of 2000. A copy of Mr. Zeitman's  
8 fax indicating that they would accept multiple requests.  
9 They seemed fairly gracious. And I also filed my cover  
10 letter, actually, responding to some of the concerns that the  
11 PA raised, specifically. And that was in my letter of  
12 September 15th. It was attached to our brief. So what I  
13 would ask is that we make this a joint request, we get  
14 certified documents from the Israeli authorities, and they  
15 receive a copy directly from the Israeli authorities, and  
16 they have access to them, as well, just as they should. If  
17 they had any additional information that they wanted  
18 requested to include in this petition, Mr. Zeitman says very  
19 clearly that they would reopen the case even if it was closed  
20 to process new requests. We have no policy of one letter  
21 request. So, you know, I'm wondering if that might be a way  
22 around it, Judge, so we have completely clear understanding  
23 of what has transpired.

24 THE COURT: Mr. Schilling, do you wish to make it a  
25 joint request?

1 MR. SCHILLING: I don't think so, your Honor. I  
2 can't speak for my client on this. I think I need to find  
3 out whether the client would want to be making a request of  
4 the Government of Israel under the Hague Convention. I think  
5 that it would be perfectly adequate for Mr. Strachman to make  
6 the request and for us to be kept fully informed of what the  
7 request consisted of and how it was being processed.

8 THE COURT: Mr. Strachman, would you go back to the  
9 podium, please. If the Court grants this petition, you'll  
10 provide copies of the request that is made upon the Israeli  
11 government, and the response that is received from the  
12 Israeli government to the defendants?

13 MR. STRACHMAN: Absolutely, your Honor. A copy of  
14 the proposed request was included in the package we sent to  
15 the Court on July 26, so Mr. Schilling has that. That's  
16 called the letter request that we're actually asking the  
17 Court to issue to the appropriate authorities in Israel, so  
18 they know exactly what has been requested. And as I also  
19 mentioned in our petition accompanying that letter that I  
20 represented that upon receipt of, plaintiffs will provide  
21 counsel for all appearing defendants with complete copies of  
22 all documents received pursuant to this letter request. So  
23 that sort of goes without saying that that information would  
24 be provided to him.

25 MR. SCHILLING: I'm aware of both of those things,



1 your Honor, and I appreciate them, but my request would also  
2 include any communications, additional communications, that  
3 took place, that take place, with the Israeli authorities on  
4 the scope of the request and the response that's going to be  
5 made to the request. There may not be any but it's entirely  
6 possible that there may be some.

7 THE COURT: All right, Mr. Schilling, I think  
8 that's a reasonable request. I do intend to grant that  
9 request.

10 Mr. Strachman, just one final point. As I reviewed  
11 the filing in this matter on this motion, which I recognize  
12 was made prior to the hearing on the motion to enter default  
13 judgment, a good portion of the justification that was  
14 offered by the plaintiffs for the petition was the materials  
15 were needed for the hearing on the motion to enter default  
16 judgment which has already been conducted, and I gather the  
17 plaintiffs were able to proceed at the hearing without this  
18 material. I gather the plaintiffs are representing that  
19 notwithstanding that fact they still need the materials that  
20 are sought, is that correct?

21 MR. STRACHMAN: I think some of the materials we  
22 had, Judge, in a separate request in a separate action.  
23 What's crucial in this case is to have them certified from  
24 the Government so that the issue of authentication is  
25 resolved, and to my understanding that's the heart of the

1 Hague Convention process.

2 THE COURT: I understand. All right, the Court's  
3 ready to rule.

4 Before the Court is plaintiffs' petition for  
5 issuance of letter of request for judicial assistance. The  
6 Court's going to grant the motion on the following  
7 conditions: The plaintiffs shall provide to defendants a  
8 copy of all communications, including the request itself  
9 which is sent to the Israeli government. Any follow-up  
10 communications that are made by the plaintiffs to the Israeli  
11 government concerning the request, copies of those  
12 communications shall be provided to the defendants. Copies  
13 of all responses from the Israeli government in connection  
14 with the request for judicial assistance shall be provided to  
15 the defendants. So the defendants will receive a copy of the  
16 request. They'll receive copies of any communications from  
17 the plaintiffs to the Israeli government regarding the  
18 request, and the defendants will receive copies of whatever  
19 responses are made by the Israeli government to the request.

20 MR. STRACHMAN: Your Honor, could I just add that  
21 Mr. Schilling, the defendants, similarly inquire of  
22 Mr. Zeitman's office that we receive copies of any requests  
23 that he makes?

24 THE COURT: Yes. The Court's order will stand,  
25 apply to both the plaintiffs and the defendants. Should the

1 defendants make any communication to the Government of Israel  
2 regarding the request for judicial assistance, they shall  
3 provide a copy of that communication to the plaintiffs.

4 MR. SCHILLING: And may that include also, your  
5 Honor, any oral communications, telephone, conversations and  
6 so forth?

7 MR. STRACHMAN: Your Honor, I'm sorry to interrupt.  
8 It's somewhat difficult sometimes communicating, and that's  
9 why we were in a hurry to sort of get this process going  
10 because it takes so much time. I don't know how we would  
11 orally, you know, if we called and say, did you get my fax,  
12 you know, are you open today? Did you get that? Did we -- I  
13 don't know how we would effectuate that. I'm not asking that  
14 if he calls over to Mr. Zeitman's office that he has to  
15 notify me of what was said, and we have to have a  
16 stenographer for every conversation, but maybe we should have  
17 free access to the same officials that any litigant would  
18 have. I don't believe we need to have that transcribed for  
19 each other.

20 MR. SCHILLING: Obviously there's a sort of rule of  
21 reasonableness here, but if the Israeli authorities call  
22 Mr. Strachman and say, for example, do you really want that?  
23 Do you really want this? We don't think you really want  
24 this. We should know about that.

25 MR. STRACHMAN: A way to respond to that, Judge,

1 I'd ask them to put that in writing, and I would ask that  
2 substantive conversations be put in writing, and that they be  
3 shared. The mechanics of actually getting the documents, I  
4 presume picking them up and retrieving them, and where they  
5 are, is somewhat difficult. That's --

6 THE COURT: The Court's ruling is that substantive  
7 communications between the defendants and the Israeli  
8 government, or the plaintiffs with the Israeli government,  
9 should be in writing. If there is an occasion where there is  
10 oral communication between either the plaintiffs and the  
11 Israeli government, or the defendants and the Israeli  
12 government, both the plaintiffs and the defendants are  
13 instructed that the conversation should be brief. If it goes  
14 into anything substantive, the parties should be advised that  
15 it needs to be communicated in writing. Alternatively, the  
16 attorneys for the plaintiffs and the defendants may have a  
17 joint telephone conversation with whoever it is on the other  
18 end of the line that is wishing to communicate. But counsel  
19 for both the plaintiffs and the defendants are advised that  
20 they should not engage in anything more than very brief oral  
21 communication, not involving substantive matters with the  
22 Israeli government without allowing opposing counsel to be  
23 privy to the oral communication. A brief call, did you  
24 receive my fax, a copy which was sent to opposing counsel,  
25 that will be permissible. But the objection or the example

1 given by Mr. Schilling whereby an official of the Israeli  
2 government calls Mr. Strachman and says, I've got your  
3 request. You have ten paragraphs here, do you really want  
4 all the documents contained in Paragraph 7, particularly  
5 because, you know, we've lost, because of a warehouse fire,  
6 all documents prior to 1997, that's clearly substantive. He  
7 might say it in less than a minute but it's a substantive  
8 communication to which opposing counsel must be made privy.  
9 So as officers of the Court, counsel are instructed they must  
10 comply with that limitation. If the communication is oral  
11 and it gets into anything substantive, counsel must advise  
12 the speaker that they need to make arrangements to involve  
13 opposing counsel in the conversation or the conversation must  
14 be reduced to writing so that the other side has the ability  
15 to see exactly what's taking place.

16 MR. STRACHMAN: Thank you very much, your Honor.

17 THE COURT: Please, that was a long explanation,  
18 but do your best, Mr. Strachman, to put that in the order  
19 granting the request for additional assistance. You can do  
20 it concisely, but I think you understand the Court's intent.

21 MR. STRACHMAN: Your Honor would be then  
22 executing the, at some point the letter which is in the file,  
23 and that either is transferred by the Court or by counsel to  
24 appropriate authorities in Israel?

25 THE COURT: I will do that, Mr. Strachman.

1 You submit an order reflecting the Court has this morning  
2 granted the motion, or the petition for request for judicial  
3 assistance, and on the date that I sign that order I will  
4 also then sign the document that you say is already filed in  
5 the file. It's the actual request?

6 MR. STRACHMAN: A letter request with the line  
7 where --

8 THE COURT: The Judge's signature? I'll do  
9 that.

10 MR. STRACHMAN: Thank you, your Honor.

11 MR. SCHILLING: Your Honor, if we have any  
12 comments or observations on these orders that  
13 Mr. Strachman is to submit, how promptly do you need them?  
14 How much time would we have to add our comments or  
15 observations?

16 THE COURT: I'm going to direct  
17 Mr. Strachman to send copies of the order to you, Mr.  
18 Schilling, before he submits them to the Court. I would  
19 think hopefully within a maximum of five days from the time  
20 you receive the draft order you could respond to Mr.  
21 Strachman and hopefully resolve any differences regarding the  
22 wording of the order. If you cannot resolve the differences,  
23 then Mr. -- you can prepare an alternative order and submit  
24 it to the Court. Mr. Strachman will then notify the Court  
25 that he's submitting a proposed order but you have objections

1 to it and your alternative version is being submitted  
2 hopefully simultaneously. Is that clear?

3 MR. SCHILLING: Yes. Your Honor, could the  
4 time periods that you've indicated --

5 THE COURT: Be increased?

6 MR. SCHILLING: Can they start on the day that  
7 the order is filed rather than today?

8 THE COURT: You're referring to the 45 and 60  
9 day periods?

10 MR. SCHILLING: Yes, your Honor.

11 THE COURT: No. I'm not going to do that. I  
12 will, however, give you, in terms of -- I'll increase to  
13 seven days the period of time you have to respond to Mr.  
14 Strachman's proposed order from the day you receive it. Mr.  
15 Strachman will prepare the proposed orders reflecting the  
16 Court's rulings this morning. You'll have seven days from  
17 that date to submit an alternative order.

18 But, Mr. Schilling, I strongly would suggest  
19 that you work with Mr. Strachman to resolve any differences  
20 in the wording of the order. Mr. Strachman is going to  
21 prepare the orders reflecting this morning's rulings. You'll  
22 have seven days from the date you receive those proposed  
23 orders to file an objection to them. But the objection, I  
24 want to be clear, then the burden is yours to prepare an  
25 alternative proposed order.

1 MR. SCHILLING: Yeah. I don't anticipate any  
2 serious difficulty.

3 THE COURT: I certainly hope not because I  
4 really don't look forward to having to choose between your  
5 order and Mr. Strachman. He's going to send you proposed  
6 orders. If you have a difference as to certain wording, I  
7 expect you to contact him and resolve it, and he'll make the  
8 change, and then he can submit it to the Court saying that  
9 Mr. Schilling has indicated that he has no objection to the  
10 wording of the order as submitted, and I can sign it. So I  
11 urge you strongly to work with him. And to speed things up,  
12 Mr. Strachman, please fax the order to Mr. Schilling so that  
13 -- did I say ten days or seven days?

14 MR. STRACHMAN: Five to seven, Judge. I'm hoping  
15 to get this done in the next day or two.

16 THE COURT: I hope so, too.

17 MR. SCHILLING: I don't anticipate any  
18 difficulty, your Honor. I just want to be sure we have  
19 enough time if we need it.

20 THE COURT: Well, I will give you seven days,  
21 if there is difficulty. If you can't agree on the wording of  
22 the order, you have seven days from the day that it's first  
23 faxed to you to submit to the Court an alternative order.  
24 But I really, again, strongly encourage you to work with Mr.  
25 Strachman to try to resolve differences.



1 MR. SCHILLING: And, your Honor, you may have  
2 ruled on this but I didn't hear it. May the 45 days begin to  
3 run on the day that the order is filed?

4 THE COURT: No. I had rejected that request.  
5 The 45 days is to commence running today. That's the ruling  
6 I've made.

7 MR. SCHILLING: Because we can't apply for a  
8 stay in the District Court, if that's what we plan to do,  
9 until the order is entered, so the time would be running  
10 against us.

11 THE COURT: Then I'm sure Mr. Strachman will  
12 prepare these orders extremely promptly, Mr. Schilling. Mr.  
13 Strachman, can you get these orders prepared within 72 hours?

14 MR. STRACHMAN: Absolutely. I hope to have  
15 them later today, your Honor.

16 THE COURT: He hopes to have them later today.  
17 Hopefully will fax them to you later today, and if you  
18 resolve the wording, he'll get them to me and I'll get them  
19 signed, and you'll then have an order that you can appeal.

20 All right. This concludes the hearing. I thank  
21 the attorneys for their arguments. The Court stands in  
22 recess.

23 THE CLERK: All rise

24  
25 (R E C E S S)

C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is  
a correct transcript from the official electronic sound  
recording of the proceedings in the above-entitled matter.

Joseph A. Fontes

JOSEPH A. FONTES, COURT REPORTER

June 16, 2007

DATE